

program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the Commonwealth's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to both existing and future standards and to sources covered by the part 70 program as well as non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of the Commonwealth's submittal and other information relied upon for the final interim approval are contained in docket number KY-95-01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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40 CFR Part 70

[IN001; FRL-5331-2]

Clean Air Act Final Interim Approval of Operating Permits Program; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final interim approval.

SUMMARY: The USEPA is promulgating an interim approval of the operating permits program submitted by Indiana for the purpose of complying with Federal requirements which mandate that States develop, and submit to USEPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: The effective date of this action is December 14, 1995.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: USEPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886-3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under Title V of the Clean Air Act ("the Act") as amended (1990), USEPA has promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the USEPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to USEPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to USEPA by November 15, 1993, and that USEPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the review period of a State's submittal if the State's submission is materially altered during the 1-year review period. This additional review period may not

extend beyond 1 year following receipt of the revised submission.

The USEPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, USEPA may grant the program interim approval for a period of up to 2 years. If USEPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On May 22, 1995, USEPA proposed an interim approval of the operating permits program for Indiana (see 60 FR 27064) and received public comments on the proposal. In this document, USEPA is taking final action to promulgate an interim approval of the operating permits program for Indiana.

II. Final Action and Implications

A. Analysis of State Submission

The USEPA is promulgating an interim approval of the operating permits program submitted by Indiana on August 10, 1994. Indiana's program substantially meets the requirements of part 70; however, certain issues must be addressed in the State's submittal before USEPA can grant full approval.

For more detailed information on the analysis of the State's submission, please refer to the May 22, 1995, proposed interim approval of the Indiana Title V program (see 60 FR 27064) and the technical support document (TSD) included with the docket of the proposed interim approval.

1. Regulations and Program Implementation

a. *Applicability.* The Indiana program meets the requirements of 40 CFR 70.2 and 70.3 for applicability in 326 IAC 2-7-2. Please refer to the proposed interim approval and the TSD included with the docket of the proposed interim approval for more information regarding the language in 326 IAC 2-7-2.

b. *Permit Applications.* A deficiency in the State's permit application requirements exists concerning insignificant activities, which are defined in 326 IAC 2-7-1(20). In the Indiana program, the insignificant activity threshold level for sulfur dioxide (SO₂) is 10 pounds per hour (lb/hr) or 50 pounds per day (lb/day) and the insignificant activity threshold level for hazardous air pollutants (HAP) is 4 tons per year (tpy) for one HAP or 10 tpy of any combination of HAPs. USEPA

proposed interim approval for these threshold levels in the May 22, 1995, Federal Register.

USEPA is promulgating interim approval to the SO₂ and HAP insignificant activity levels and promulgating full approval to the volatile organic compounds, particulate matter, carbon monoxide, nitrogen oxides, and lead insignificant activity levels. The rationale for the interim approval status is provided in the proposed interim approval and the TSD included with the docket of the proposed interim approval.

c. Permit issuance, renewal, reopenings and revisions. The Indiana program meets the requirements of 40 CFR 70.7 and 70.8 for permit issuance, renewal, reopenings, and public participation and the requirements of 40 CFR 70.4(b)(12) for operational flexibility. Please refer to the proposed interim approval and the TSD included with the docket of the proposed interim approval for more information regarding the language in 326 IAC 2-7-11 for administrative permit amendments.

In the May 22, 1995, notice, USEPA proposed interim approval with respect to the State's threshold levels for group processing of permits (326 IAC 2-7-12(c)). In that notice, USEPA stated that Indiana program's threshold level for minor permit modification (MPM) group processing eligibility was not as stringent as the part 70 threshold level. To obtain full approval, USEPA stated that Indiana must establish a group processing threshold consistent with 40 CFR 70.7(e)(3)(i), or demonstrate that an alternative threshold would alleviate severe administrative burden and result in trivial environmental impact. The May 22, 1995, notice stated that "if EPA's concerns are addressed by a change in the State's final regulations or by a State demonstration before final action on this notice, then EPA can fully approve the State's group processing threshold levels."

In an August 30, 1995, letter to USEPA, Indiana submitted a demonstration that an alternative threshold would alleviate severe administrative burden and would result in trivial environmental impact. In this letter, Indiana noted that its Title V regulation requires the State to provide public participation for all MPMs, including group processing MPMs. Since part 70 does not require public participation for MPMs, the State requirement is more stringent and will require public participation for many more permit modifications than the Federal rule requires. Indiana's group processing threshold level will allow the State to consolidate more of its MPM

public notice and comment periods. Although staff review of modifications as individuals or as a group may not significantly differ, the administrative savings incurred by the State to provide public notice of these permits on an individual basis would be significant. Under its current permit programs, the State processes approximately 115-125 permit exemptions per year based on the stated group processing thresholds; and the State estimates that a majority of these might have to undergo individual processing under a part 70 threshold.

With regard to environmental impact, the State's letter also notes that under its program, more modifications than required by part 70 would be subject to permitting authority review and public notice. The level and result of permitting authority review should not be impacted by individual or group processing. In fact, since group processing actions must be completed within 180 days as opposed to 90 days, there may be opportunity for greater review and consideration. In addition, increased opportunity for public comment, whether as individual or group modifications, could result in enhanced environmental benefits, but at the very least will not directly result in adverse environmental impacts. Based on these considerations, USEPA believes the State has met the required justification for a different group processing threshold and is promulgating full approval for the Indiana MPM group processing threshold levels.

2. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Indiana has demonstrated in its Title V program submittal adequate legal authority to implement and enforce all section 112 requirements through Title V permits. This legal authority is contained in Indiana's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. USEPA has determined that this legal authority is sufficient to allow Indiana to issue permits that assure compliance with all section 112 requirements.

The USEPA is accepting the above legal authority as an adequate demonstration that Indiana is able to carry out all section 112 activities relative to Title V sources. For further rationale on this interpretation, please refer to the proposed interim approval, the TSD accompanying the proposed interim approval, and the April 13,

1993, guidance memorandum titled "Title V Program Approval Criteria for section 112 activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of Section 112(g) Upon Program Approval. As a condition of approval of the Title V program, Indiana is required to implement section 112(g) of the Act. Indiana has promulgated a "MACT Rule" in 326 IAC 2-1-3.3. The purpose of this regulation is to provide Indiana the necessary mechanism to implement section 112(g).

According to the Federal Register interpretive notice published on February 14, 1995 (60 FR 8333), the requirements of section 112(g) will not become effective until after USEPA has promulgated a regulation addressing that provision. The Federal Register notice sets forth in detail the rationale for this interpretation. At the time of Indiana's program submittal and USEPA's subsequent review period, USEPA had not promulgated a federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretive notice explains that USEPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal regulation so as to allow States time to adopt regulations implementing the Federal regulation, and that USEPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until USEPA provides for such an additional postponement of section 112(g), Indiana must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) regulation and adoption of implementing State regulations. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis.

For this reason, USEPA is promulgating approval of Indiana's MACT regulation (326 IAC 2-1-3.3) under the authority of Title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between promulgation of the section 112(g) regulation and adoption by Indiana of regulations implementing the provisions of section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if USEPA decides in the final section 112(g) regulation that sources are not

subject to the requirements of the regulation until State regulations are adopted. The USEPA is limiting the duration of this proposal to 18 months following promulgation by USEPA of the section 112(g) regulation. Once promulgated by USEPA, the 112(g) regulation will serve as the mechanism for establishing federally enforceable case-by-case MACT emission limits for HAPs. USEPA is interpreting Indiana's legal authority and commitment (Enclosure H, page 33 of the Indiana program submittal) to mean that, upon promulgation of the section 112(g) regulation, the State will expeditiously adopt regulations consistent with the provisions of 112(g).

Although section 112(l) generally provides authority for approval of State air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for a Title V program approval, specified in 40 CFR 70.4(b), also encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards as promulgated by USEPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the USEPA is promulgating approval, under section 112(l)(5) and 40 CFR 63.91, of Indiana's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. This program approval applies to both existing and future standards, but is limited to sources covered by the part 70 program.

Indiana has informed USEPA that it intends to accept delegation of section 112 standards through rule adoption. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Indiana and USEPA expected to be completed prior to approval of Indiana's section 112(l) program for delegations.

d. Limiting HAP Emissions Through a Federally Enforceable State Operating Permit (FESOP) Program. On August 18, 1995, USEPA published a Federal Register notice promulgating a direct-final approval of the Indiana FESOP regulation which would establish

federally enforceable limits on sources' potential to emit. If USEPA does not receive any comments on this notice by September 18, 1995, the approval will become effective on October 17, 1995, and Indiana will have the ability to place federally enforceable limits on HAPs in addition to criteria pollutants through a FESOP permit. The federal enforceability of HAP limits in a FESOP permit is addressed in the August 18, 1995, Federal Register notice.

e. Title IV. Indiana's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. 326 IAC 21-1-1 incorporates by reference 40 CFR part 72, 75, 76, 77, and 78. Indiana's program submittal contains a commitment to revise its regulations as necessary to accommodate federal revisions and additions to Title IV and the Acid Rain regulations once they are promulgated.

B. Response to Public Comments

The USEPA received comments from two parties. The USEPA's responses to these comments are summarized in this section.

1. Comment by Mobil Oil Company

Mobil Oil Company commented that it supports the proposed interim approval of the Indiana Title V program. Mobil, however, urges USEPA to expeditiously approve a federally enforceable state operating permit (FESOP) program for the State of Indiana so that sources will have a federally enforceable mechanism to limit potential to emit so as to stay below the Title V threshold level.

USEPA agrees that a FESOP program may provide a useful mechanism for reducing the permitting burden on sources that can limit potential to emit to below the Title V threshold level. Indiana has submitted a FESOP program to USEPA as a proposed revision to the State implementation plan and USEPA has published a direct-final approval notice for the Indiana FESOP program in the August 18, 1995, Federal Register.

2. Comment by Eli Lilly and Company

Eli Lilly and Company (Lilly) commented that it supports the proposed interim approval of the Indiana Title V program. Lilly, however, commented on a definition that was not addressed in the proposed interim approval. Lilly wants USEPA to clarify that the definitions of "Title I modification" and "case-by-case determination of an emission limit or other standard," as used in 326 IAC 2-7, do not include minor new source

review (NSR) requirements. This is commonly known as the "narrow definition of a Title I modification." Such a definition would allow minor NSR modifications to be processed through the minor permit modification (MPM) procedure of 326 IAC 2-7-12 or the operational flexibility procedures of 326 IAC 2-7-20.

In an August 29, 1995, letter to USEPA, Indiana has stated that, it developed the State Title V regulation to allow flexibility in this definition. Indiana also stated that it did not indicate at any time during the regulation development process that it would include minor NSR modifications as "Title I modifications." The August 29, 1995, letter states that, since the use of the narrow definition of "Title I modification" is not a USEPA interim approval issue and USEPA stated in a June 20, 1995, letter that it plans to adopt the narrow definition in upcoming supplemental rulemaking, Indiana will be employing the narrow definition in the implementation of its Title V program. Consistent with actions taken on other Title V programs, USEPA is accepting Indiana's intention to use the narrow definition of "Title I modification" and is not identifying this interpretation as an interim approval issue in this notice.

C. Options for Approval/Disapproval and Implications

The USEPA is promulgating an interim approval to the operating permits program submitted by Indiana on August 10, 1994. The State must make the following changes to receive full approval: The State must amend its insignificant activities levels for SO₂ and HAPs to levels which assure that large sources are included in Title V review. Indiana's program is not fully approvable because of this deficiency. The program, however, substantially meets the requirements of part 70 because Indiana's regulations and legislation comply with all other part 70 requirements.

D. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends for a period of up to 2 years from the effective date of this promulgation. During the interim approval period, the State is protected from sanctions for failure to have a program, and USEPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does

the 3-year time period for processing the initial permit applications. Because the interim approval automatically expires 2 years after promulgation of a final interim approval, the State may submit its interim corrections at any time. However, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The USEPA will then have 6 months to promulgate a final action.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by 6 months before expiration of the interim approval, USEPA would start an 18-month clock for the mandatory imposition of section 179(b) sanctions. Section 179(b) of the Act mandates the impositions of the following sanctions: (1) 2 to 1 emission offsets for new construction in nonattainment areas and (2) restriction on federal funding of highway projects.

If the State then failed to submit a corrective program that USEPA found complete before the expiration of that 18-month period, USEPA would be required to apply the emission offset sanction, which would remain in effect until USEPA determined that the State had submitted a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after the application of the first sanction, the State still had not submitted a corrective program that USEPA found complete, the highway sanction would be required.

If, following final interim approval, USEPA were to disapprove the State's complete corrective program, USEPA would be required to apply the emission offset sanction on the date 18 months after the effective date of the disapproval, unless, prior to that date, the State had submitted a revised program and USEPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, 6 months after USEPA applied the first sanction, the State had not submitted a revised program that USEPA had determined corrected the deficiencies that prompted disapproval, the highway sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or USEPA had disapproved a submitted corrective program. Moreover, if USEPA has not granted full approval to a State program by the expiration of an interim approval USEPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final regulation on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the regulation will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal operating permits program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the

private sector, of \$100 million or more. In such cases, under Section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Also in such cases, Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 27, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for Indiana in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Indiana

(a) The Indiana Department of Environmental Management: submitted on August 10, 1994; interim approval effective on November 14, 1995; interim approval expires November 14, 1997.

(b) (Reserved)

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